BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Amendment of Part 90 of the Commission's Rules Governing Extended Implementation Periods	)	**PR Docket No. 92-210**

To: The Commission

REPLY COMMENTS OF CONSUMERS POWER COMPANY

Consumers Power Company ("Consumers"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby respectfully submits these Reply Comments in response to the Notice of Proposed Rule Making ("NPRM") adopted in the above-referenced proceeding on September 9, 1992, FCC 92-429 (released October 13, 1992) and in response to the Comments filed thereon.

I. STATEMENT OF IDENTIFICATION

1. Consumers is the largest utility in the state of Michigan. It provides natural gas to the Metropolitan Detroit area and electricity to virtually the whole state.

In fact, Consumers' service territory encompasses almost the entire state of Michigan, excluding the area north of Lake Michigan. Consumers' operating territory stretches from Detroit in the southeastern portion of the state, to Dowagiac in the southwest, to Cheboygan in the north. Consumers is in the process of licensing and installing an 800 MHz wide-area system to serve its entire operating territory. Once completed, the system will have over 3,200 mobile, portable, and control units, as well as some 26 base station sites.

2. Consumers received its first licenses for its system in early 1991. These licenses cover the Greater Detroit Metropolitan Area. Consumers sought these licenses first, because Consumers' radio operations in Detroit were in dire need of relief. Consumers' then-existing mobile facilities were suffering increasingly intolerable congestion and related problems. Construction of the 800 MHz system in the Detroit area is well underway, with users already enjoying many of the benefits of advanced 800 MHz technology. Consumers now is in the process of licensing its remaining facilities. These licenses are expected shortly. However, due to site changes Consumers already knows that its forthcoming licenses will have to be modified.

3. Both the "Metropolitan Detroit" and "Outstate" phases of Consumers' system benefit from the Commission's "slow growth" rule. Because of the breadth complexity of these implementation efforts, Consumers has a strong interest in the issues raised in the NPRM and by the Commenters.

II. DISCUSSION

A. Consumers Strongly Encourages the Commission to Continue its Flexible Approach Towards Modification of Implementation Schedules

4. Consumers supports the Commission's proposed rule changes and generally welcomes their adoption. However, several Commenters have raised points which concern Consumers and to which Consumers feels compelled to respond. For instance, APCO opposes elimination of the annual reporting requirement; CICS asks that there be a vigorous program for monitoring compliance with implementation schedules; and NABER notes that arguably a slow growth system could be subject to Finder's Preference Requests 180 days after the licensee misses an implementation benchmark.[1/]

1/ *See* Comments of Associated Public-Safety Communications Officers, Inc. ("APCO") at p. 5; Comments of Council of Independent Communication Suppliers ("CICS") at p. 10; and Comments of National Association of Business and Educational Radio, Inc. ("NABER") at p. 9.

5. Consumers obviously does not oppose rules which require a slow growth licensee to abide by its schedule. However, Consumers urges the Commission to continue its flexible approach in allowing slow growth licensees to modify their schedules over time.[2/] Slow growth licensees are granted extended implementation authority initially because they have demonstrated their need for additional time to construct and place facilities in operation, 47 C.F.R. § 90.629. In other words, the slow growth rule itself recognizes that these licensees require and deserve regulatory flexibility. To turn around and impose strict adherence to a schedule on them only disserves the rule's intent.

6. NABER's suggestion that, under the proposed rules, the Commission could allow a Finder's Preference filing 180 days after a failure to meet a construction/operational benchmark is particularly troublesome.[3/] Consumers strongly believes the rules should not be interpreted to allow such requests. Again, the Commission has allowed licensees to regularly modify their implementation schedules to account for changed

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2/ This position is also supported by Fleet Call and the Utilities Telecommunications Council ("UTC"). See Comments of Fleet Call at p. 6; and Comments of UTC at p. 8.

3/ Comments of NABER at p. 10.

circumstances, including delays caused by problems with site acquisition, permitting, equipment delivery, weather, and funding. Licensees are granted "slow growth" status so that they can adjust to the above challenges, not so that they can be punished for them.

7. Allowing Finder's Preference Requests to be filed during a licensee's implementation period not only would limit this flexibility, but it would undermine the Commission's goal of reducing the regulatory burdens which the slow growth mechanism engenders. If Preference Requests were allowed, the Commission undoubtedly would be inundated with such Requests as speculators hunt for "free" spectrum. Unfortunately, they likely would be hunting at the same time slow growth licensees would be modifying their implementation schedules. Scarce Commission resources then would be wasted in reviewing a Request which had failed to consider the most recent and up-to-date schedules.

8. In the end, Consumers agrees that implementation schedules should be subject to review, but, in the event of unforeseeable delays, it urges the Commission to work with licensees not against them.

B. The Commission Should Ensure that the Proposed Loading Rule Covers Existing Slow Growth Licensees

9. Consumers is encouraged that the vast majority of Commenters who addressed the issue support the Commission's proposal to subject slow growth licensees to the more lenient 70-unit loading requirement.4/ This is an equitable solution to a problem that has often resulted in inequitable treatment to those licensees with extended implementation status. However, along with other Commenters,5/ Consumers must emphasize the importance of applying the new 70-unit standard to existing and soon-to-be licensed 800/900 MHz systems. Not making this clarification would continue the trend of inequitable treatment currently associated with this rule.

C. Consumers Supports Extending the Slow Growth Term to Five Years, It Supports Standards for Slow Growth SMRs, and It Does Not Share APCO's Concerns Regarding Public Safety Channels

10. Along with most of the other Commenters, Consumers supports extending the slow growth term from three to five years. Once again, this proposal underscores the Commission's commitment to unique treatment of extended

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4/ See, e.g., Comments of UTC at p. 8; Comments of CICS at p. 9.

5/ See, e.g., Comments of CICS at p. 11; and Comments of Southern California Edison Company ("SCE") at p.4.

implementation licensees. Five years is a more realistic goal for completion of these often large, complex systems. The American Mobile Telecommunications Association, Inc. ("AMTA") has expressed reservations about such extensions,[6/] and Consumers recognizes that the Commission may opt to enact stricter standards for attaining that longer length of time. However, the ability to attain five years' authority by rule would greatly alleviate unnecessary regulatory burdens which licensees of extremely large systems face.

11. Additionally, several Commenters have argued that Specialized Mobile Radio ("SMR") applicants for extended implementation should only be afforded "slow growth" authority if the systems are especially complex.[7/] While Consumers is not directly affected by this proposal, it supports it since it discourages spectrum warehousing, and yet still provides appropriate relief to those SMR applicants who are proposing innovative and complex systems.

12. APCO has commented that extended slow growth authority would encourage spectrum hoarding.[8/] Consequently, APCO urges the Commission to prohibit non-

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6/ Comments of AMTA at p. 7.

7/ See, e.g., Comments of CICS at p. 5.

8/ Comments of APCO at p. 3.

public safety entities from incorporating Public Safety channels into their slow growth systems, unless the Public Safety channels are built within one year of licensing.[9/] Consumers does not share this view. APCO has not made any showing of the spectrum misuse it alleges. Further, the inter-category sharing of Public Safety channels actually promotes spectrum use and efficiency -- previously unused Public Safety channels are made available to entities that need the frequencies for communications services.

WHEREFORE, THE PREMISES CONSIDERED, Consumers Power Company submits the foregoing Reply Comments and urges the Federal Communications Commission to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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9/ *Id.* at p. 4.

CERTIFICATE OF SERVICE

I, Wendy Unsworth, a secretary at the law firm of Keller and Heckman, do hereby certify that on this 15th day of December 1992, I forwarded to the parties listed below a copy of the foregoing Reply Comments of Consumers Power Company by first-class mail, postage pre-paid:

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